

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ARTURO CHING, an individual on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY; and DOES 1
through 10 inclusive,

Defendants.

CASE NO. CV 09-2613 MMC (EDL)

Hon. Maxine M. Chesney

STIPULATED PROTECTIVE ORDER

The parties to this action, Plaintiff ARTURO CHING individually and on behalf of all others similarly situated, by and through his attorneys, and Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, hereinafter referred to as “State Farm”, by and through its attorneys, do hereby stipulate to and agree that an order pursuant to Federal Rule of Civil Procedure 26(c) is necessary and hereby agree to the following protective order:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated

Protective Order (the “Order”). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1. Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2. Disclosure or Discovery Material: All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3. “Confidential” Information or Items: Information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4. “Highly Confidential – Attorneys’ Eyes Only” Information or Items: Extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5. Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

2.6. Producing Party: A Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: A Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

1 2.8. Protected Material: Any Disclosure or Discovery Material that is designated as
2 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

3 2.9. Outside Counsel: Attorneys who are not employees of a Party but who are retained
4 to represent and have appeared for a Party in this action.

5 2.10. House Counsel: Attorneys who are employees of a Party.

6 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
7 support staffs).

8 2.12. Expert: A person with specialized knowledge or experience in a matter pertinent to
9 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
10 consultant in this action and who is not a past or a current employee of a Party or a competitor of a
11 Party and who, at the time of retention, is not anticipated to become an employee of a Party or a
12 competitor of a Party. This definition includes a professional jury or trial consultant retained in
13 connection with this litigation.

14 2.13. Professional Vendors: Persons or entities that provide litigation support services
15 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
16 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

17 **3. SCOPE**

18 The protections conferred by this Order cover not only Protected Material (as defined
19 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
20 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
21 counsel to or in court or in other settings that might reveal Protected Material.

22 **4. DURATION**

23 Even after the termination of this litigation, the confidentiality obligations imposed by this
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
25 otherwise directs.

26 ///

27 ///

28 ///

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or non-party that designates information or items for protection under this Order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. A
5 Designating Party must take care to designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify – so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.
9

10 Mass, indiscriminate, or routinized designations are prohibited. If it comes to a Party's or a
11 non-party's attention that information or items that it designated for protection does not qualify for
12 protection at all, or does not qualify for the level of protection initially asserted, that Party or non-
13 party must promptly notify all other parties that it is withdrawing the mistaken designation.
14

15 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order
16 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
17 material that qualifies for protection under this Order must be clearly so designated before the
18 material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) For information in documentary form (apart from transcripts of depositions or other
21 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that
23 contains protected material. If only a portion or portions of the material on a page qualifies for
24 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
25 appropriate markings in the margins) and must specify, for each portion, the level of protection
26 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY").
28

1 A Party or non-party that makes original documents or materials available for inspection
2 need not designate them for protection until after the inspecting Party has indicated which material
3 it would like copied and produced. During the inspection and before the designation, all of the
4 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions thereof,
7 qualify for protection under this Order, then, before producing the specified documents, the
8 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected
10 Material. If only a portion or portions of the material on a page qualifies for protection, the
11 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
12 markings in the margins) and must specify, for each portion, the level of protection being asserted
13 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

14 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the
15 Party or non-party offering or sponsoring the testimony identify on the record, before the close of
16 the deposition, hearing, or other proceeding, all protected testimony, and further specify any
17 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
18 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to
19 protection, and when it appears that substantial portions of the testimony may qualify for
20 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
21 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify
22 the specific portions of the testimony as to which protection is sought and to specify the level of
23 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
24 EYES ONLY”). Only those portions of the testimony that are appropriately designated for
25 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

26 Transcript pages and exhibits containing Protected Material must be separately
27 bound by the court reporter, who must affix to the top of each such page the legend
28

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” as
2 instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

3 (c) For information produced in some form other than documentary, and for any other
4 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
5 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
6 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” If only portions of the
7 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
8 the protected portions, specifying whether they qualify as “Confidential” or as “Highly
9 Confidential — Attorneys’ Eyes Only.”

10 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items as “Confidential” or “Highly Confidential — Attorneys’
12 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
13 this Order for such material. If material is appropriately designated as “Confidential” or “Highly
14 Confidential — Attorneys’ Eyes Only” after the material was initially produced, the Receiving
15 Party, on timely notification of the designation, must make reasonable efforts to assure that the
16 material is treated in accordance with the provisions of this Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party’s
19 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
20 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
21 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
22 after the original designation is disclosed.

23 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
24 confidentiality designation must do so in good faith and must begin the process by conferring
25 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
26 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
27 that the confidentiality designation was not proper and must give the Designating Party an
28

1 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
2 designation is offered, to explain the basis of the chosen designation. A challenging Party may
3 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
4 process first.

5
6 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality
7 designation after considering the justification offered by the Designating Party may file and serve a
8 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
9 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
10 motion must be accompanied by a competent declaration that affirms that the movant has complied
11 with the meet-and-confer requirements imposed in the preceding paragraph and that sets forth with
12 specificity the justification for the confidentiality designation that was given by the Designating
13 Party in the meet-and-confer dialogue.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating
15 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
16 question the level of protection to which it is entitled under the Producing Party's designation.

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a non-party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
21 the categories of persons and under the conditions described in this Order. When the litigation has
22 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
23 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons authorized under
25 this Order.

26 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
27 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
28 information or item designated CONFIDENTIAL only to:

1 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of
2 said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
3 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as
4 Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
6 to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement
7 to Be Bound by Protective Order" (Exhibit A);

8 (c) Experts (as defined in this Order) and their staffs to whom disclosure is reasonably
9 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
10 Order" (Exhibit A);

11 (d) the Court and its personnel;

12 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
13 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
14 Order" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
16 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).
17 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
18 must be separately bound by the court reporter and may not be disclosed to anyone except as
19 permitted under this Stipulated Protective Order.; and

20 (g) the author of the document or the original source of the information.

21 7.3. Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY"
22 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
23 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
24 CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to:

25 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of
26 said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
27 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as
28 Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(e) during their depositions or at hearings, witnesses where it appears on the face of the document or other item or from other documents or testimony that the HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY information or item has been received or authored by that witness, or communicated to that witness, or it otherwise appears on the face of the document or other item that the document or item contains information about which it appears reasonably likely that the witness has discoverable information. Witnesses shall not be permitted to retain copies of HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY materials or exhibits; and

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence of this
2 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
3 confidentiality interests in the court from which the subpoena or order issued. The Designating
4 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
5 material — and nothing in these provisions should be construed as authorizing or encouraging a
6 Receiving Party in this action to disobey a lawful directive from another court.

7 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstance not authorized under this Stipulated Protective
10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
12 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
13 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
14 Be Bound” that is attached hereto as Exhibit A.

15 **10. FILING PROTECTED MATERIAL**

16 Without written permission from the Designating Party or a court order secured after
17 appropriate notice to all interested persons, a Party may not file in the public record in this action
18 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
19 with Civil Local Rule 79-5.

20 **11. FINAL DISPOSITION**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
22 days after the final termination of this action, each Receiving Party must return all Protected
23 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all
24 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the
25 Protected Material. With permission in writing from the Designating Party, the Receiving Party
26 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
27 Material is returned or destroyed, the Receiving Party must submit a written certification to the
28 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day

1 deadline that identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
3 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
5 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
6 even if such materials contain Protected Material. Any such archival copies that contain or
7 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
8 (DURATION), above.

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **12. MISCELLANEOUS**

2 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the Court in the future.

4 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order
5 no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered by
8 this Protective Order.

9
10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11
12 DATED: February 4, 2010

KABATECK BROWN KELLNER LLP

13 By: _____/s/

14 Brian S. Kabateck
15 Richard L. Kellner
16 Alfredo Torrijos

17 *Attorneys for Plaintiff*

18 DATED: February 4, 2010

SEDGWICK, DETERT, MORAN & ARNOLD LLP

19
20 By: _____/s/

21 Kevin J. Dunne
22 Laura L. Goodman
23 Andrew J. King

24 *Attorneys for Defendant*

25 **PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.**

26 DATED: February 16, 2010

27 By: 
28 Hon. Maxine M. Chesney
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARTURO CHING, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY; and DOES 1
through 10 inclusive,

Defendants.

CASE NO. CV 09-2613 MMC (EDL)

Hon. Maxine M. Chesney

ACKNOWLEDGMENT AND AGREEMENT
TO BE BOUND BY TERMS OF
STIPULATED PROTECTIVE ORDER

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Northern District of California on _____ [date] in the
case of *Arturo Ching v. State Farm Mutual Automobile Insurance Company*, United States District
Court, Northern District of California Case No. CV 09-2613 MMC (EDL). I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Order, even if such

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings related to
enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: